IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6912 OF 2005

Pune Zilla Madhyawarti Sah. Bank.,
4, B.J. Road, Pune - 411 001. ... Petitioner

V/s

Smt. Urmila Chandrakant Patil,
R/At 1549, Sadashiv Peth,
Pune - 411 030. ... Respondent

Mr. P.S. Dani for the petitioner.

Mr. R.S. Apte with Mr.M.S. Lagu for the respondent.

CORAM: S.U. KAMDAR, J.

DATED: 22ND NOV., 2005

ORAL JUDGMENT:

1. The present petitioner challenged the impugned order dated 28.7.2005 in Civil Appeal No. 632 of 2004. Some of the material facts of the present case in brief are as under:

2. The respondent landlord has filed the a suit in the Court of Small Causes at Pune being civil Suit No. 366 of 2003 under the provision of Presidency Small Causes Court Act by relying upon the provision of Sec. 3(i)(b) of the Maharashtra Rent Control Act, 1999. The

respondent has filed the reply and raised the contention that they are not covered by the provision of Sec. 3(i)(b) of the Maharashtra Rent Control Act, 1999. The petitioner herein is a Co-operative Bank known as Pune Zilla Madhyawarti Sahakari Bank. Admittedly, the share capital of the bank is more than Rs. One crore. Respondent has filed the suit on the basis that the petitioner being a bank and having share capital of more than Rs. One crore is not covered by the protection conferred under the Maharashtra Rent Control Act by virtue of exemption provided under Sec.3(1)(b) of the Act. It is the case of the respondent that, in absence of protection, the tenancy of petitioner bank is governed by Transfer of Property Act and, therefore, can be terminated under Sec. 106 of the Transfer of Property Act, 1882. The defence raised by the petitioner before the Trial Court as well as before me is that the provision of Sec. 3(1)(b) of the Maharashtra Rent Control Act is not applicable because under the explanation to Sec.3(1)(b) it has been specifically provided that the word "bank" means only those bank who are covered under the categories (1), (2), (3) and (4) thereof. The provision of Sec. 3(1)(b) alongwith explanation thereof reads as under :

"Sec.3(1)(b): to any premises let or sub-let to banks, or any Public Sector Undertakings or any corporation established by or under any Central or State Act, or foreign missions, international agencies, multinational companies, and private limited companies and public limited companies having a paid up share capital of rupees one crore or more."

Explanation.- For the purpose of this clause the expression "bank" means,

(i) the State Bank of India constituted under the State Bank of India Act, 1955;

(ii) a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959;

(iii) A corresponding new bank constituted under Section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or under section 3 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980; or

(iv) any other bank, being a scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934."

The learned counsel for the petitioner by relying upon the provision of Sec.3(1)(b) and particularly explanation thereto, has contended that the petitioner is not a bank falling under any of the four categories specified in the explanation thereto. He has contended that the petitioner bank is a co-operative bank and it is neither a State Bank of India nor a subsidiary as defined under the State Bank of India (Subsidiary Banks) Act, 1959 or new bank constituted under Sec. 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or under Sec. 3 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980. It has been submitted that the petitioner bank is not even the scheduled bank as defined in Clause (e) of Sec.2 of the Reserve Bank of India Act. It has been thus contended that the petitioner being not falling in the category of exemption under Sec.3(1)(b) of the Maharashtra Rent Control Act, the petitioner is entitled to the protection of the Rent Control Act as they are admittedly the tenant of the respondent herein. It has been further contended that in the light of the

aforesaid, the suit filed by the respondents under Sec.3(1)(b) of the Maharashtra Rent Control Act, 1999 is not maintainable and the petitioner is entitled to the protection as conferred under the Rent Act. It is thus submitted that they cannot be evicted from the premises unless the ground is made out under the provision of Maharashtra Rent Control Act, 1999.

3. On the other hand, the learned counsel appearing for the respondent has contended that the only requirement under Sec. 3(1)(b) is that the share capital of the Company or a Corporation or a Bank must exceed Rs. One crore. He has submitted that, admittedly, the share capital of the petitioner bank is more than Rs. One crore. He has further contended that the Co-operative Bank has been defined under Sec.2(1) of the Maharashtra Co-op. Societies Act. The Co-operative Bank is a society which is doing a business of banking as defined under Clause (b) of sub-section (1) of Sec.5 of the Banking Companies Act, 1949 and included any society which has function or is to function as a Agricultural Rural Development Bank under Chapter XI. The provision of Sec. 2 sub-section (10) of the Maharashtra Co-operative Societies Act, 1960 is set out herein below:-

> **Sec.2(10):** "co-operative bank" means a society which is doing the business of banking as defined in clause (b) of sub-section (1) of section 5 of the Banking Companies Act, 1949 and includes any society which is functioning or is to function as an Agricultural and Rural Development Bank under Chapter XI."

The learned counsel for the respondent drawn my attention to the provision of Banking Regulations Act, 1949 and has contended that the business of the petitioner is a banking business as defined under the provision of Banking Regulations Act and, therefore, it is a bank and irrespective of the fact that whether it falls under any of the categories of Sec.3(1)(b) of the Maharashtra Rent Control Act, 1999 and explanation thereto, they are covered as long as their share capital is exceeding Rs. One crore. It has been, therefore, contended that the suit preferred by the respondent landlord against the petitioner bank in the light of provisions of Sec.3(1)(b) of the Maharashtra Rent Control Act is legal, valid and maintainable and the petitioner is not entitled to the benefit of protection as conferred to the tenants under the Maharashtra Rent

Control Act, 1999.

4. I have considered the rival submissions of the parties. In my opinion, provision of Sec.3(1)(b) has to be read alongwith explanation thereto. The provision of Sec.3(1)(b) once read alongwith the explanation, it is very clear that the banks which are sought to be covered by the exemption under Sec.3(1)(b) are only those banks which are specified under the explanation thereto and no other banks though carrying on banking business but not covered by the provision of definition of the bank under Sec.3(1)(b) of the Maharashtra Rent Control Act, 1999. To accept the argument of the learned counsel for the respondent that because the petitioner is carrying on banking business and that the share capital of the bank is admittedly more than Rs.One crore is by itself sufficient to cover the petitioner bank in the category of bank as specified in exemption as Sec.3(1)(b) would amount to enlarge the scope of the section by interpretation which is not permissible in the light of clear wordings of the said section. When the legislature has specifically provided in the section itself the definition of the word "bank", then in that event, the bank must fall under the category of the explanation as contemplated under the provisions of

Sec.3(1)(b) of the Maharashtra Rent Control Act, 1999 otherwise bank as other tenants also would be entitled to the same protection as other tenants. In my opinion, such an interpretation of the definition of the bank under Sec.3(1)(b) would be contrary to the explanation itself of the said section and thus cannot be accepted.

5. In that light of the matter, the impugned orders passed by the lower Courts are entirely based on wrong proposition and requiring to be interfered with. Thus I allow the present petition and set aside both the impugned orders passed by the lower Courts and dismiss the said suit being Civil Suit No. 366 of 2003 filed before the Small Causes Act at Pune.

6. Petition is made absolute accordingly with no order as to costs.

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